

FILED

MAR 30 2022

Matthew J. Cook  
CLERKUNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHAVEZ SPOTTED HORSE,

Defendant.

1:17-CR-10005-CBK

ORDER

Defendant was convicted of three counts of child abuse and three counts of assault with a dangerous weapon. He was sentenced on January 4, 2018, to a total sentence of 76 months custody, with the sentence to run consecutive to the sentence of 78 months imposed in 1:17-CR-10013-CBK for the crime of receipt of images depicting the sexual exploitation of minors. Defendant appealed his conviction and sentence and the United States Court of Appeals for the Eighth Circuit affirmed. United States v. Spotted Horse, 916 F.3d 686 (8th Cir. 2019). Defendant has filed a motion for review of sentence and for the appointment of counsel.

Defendant contends that he is entitled to relief because the United States Supreme Court, in Borden v. United States, \_\_\_ U.S. \_\_\_, 141 S. Ct. 1817, 210 L. Ed. 2d 63 (2021), held that a prior criminal offense does not qualify as a violent felony under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), if the prior offense requires only a *mens rea* of recklessness. ACCA mandates a minimum sentence of 15 years if the defendant is being sentenced for certain firearms offenses after having committed three or more prior violent felonies.

Defendant was not sentenced under ACCA. He was sentenced in this case for the crimes of child abuse and assault with a dangerous weapon. His sentencing guideline range was not enhanced under the career offender guideline, 18 U.S.S.G. § 4B1.1, which

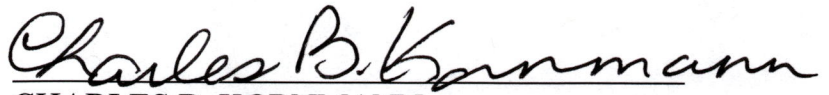
also requires a finding that defendant committed prior crimes of violence. Borden is not applicable to defendant's offenses of conviction, nor his sentences.

Accordingly,

IT IS ORDERED that defendant's motions, Doc. 136, for review of sentence and for the appointment of counsel are denied.

DATED this 25<sup>th</sup> day of March, 2022.

BY THE COURT:

  
CHARLES B. KORNMAN  
United States District Judge